

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

Anthony McFerren,

Petitioner, :

vs. :

C.A. 05-66 ERIE

Superintendent Tennis,

Respondents, :

DISTRICT ATTORNEY'S ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS

AND NOW this 19th day of July, 2005, comes the Commonwealth of Pennsylvania, by Douglas W. Ferguson, Esq., Assistant District Attorney of Crawford County, Pennsylvania, and files the following answer to the Petitioner's Petition for Writ of Habeas Corpus and answers the Petition as follows:

1. The Commonwealth denies each and every allegation of fact alleged by the Petitioner in the Petition except those facts specifically admitted herein.

2. The Petitioner was found guilty of Murder of the first degree and Robbery after a jury trial on May 16, 1979.

3. The Petitioner was sentenced on August 23, 1979, to five to ten years imprisonment on the Robbery and life imprisonment on the Murder.

4. On September 23, 1980, the Petitioner filed for leave to appeal nunc pro tunc, which was granted.

5. On July 9, 1984, the Pennsylvania Superior Court dismissed the Petitioner's appeal for failure to file Appellate brief.

6. On July 3, 1997, Petitioner filed a pro se petition for post conviction collateral relief.

7. On March 19, 1997, the Trial Court denied the Petitioner's PCRA without hearing for late filing.

8. On November 3, 1997, the Petitioner filed a pro se notice of appeal to the Pennsylvania Superior Court.

9. On August 24, 1998, the Pennsylvania Superior Court reversed the Trial Court's decision and remanded the case for further proceedings.

10. On October 2, 1998, the Trial Court appointed Mark Stevens, Esquire, to represent the Petitioner in his PCRA case. On December 16, 1998, Mark Stevens, Esquire, withdrew as counsel.

11. On December 23, 1998, the Trial Court appointed Edward Hatheway, Esquire, as


counsel for the Petitioner.

12. On February 16, 1999, a motion for extension of time to file amended PCRA petition was filed and granted.
13. On March 18, 1999, a second motion for extension of time to file amended PCRA petition was filed and granted.
14. On May 5, 1999, an amended motion for PCRA relief was filed. After numerous continuances and amendments an ordered was entered on January 30, 2001, granting PCRA relief in the nature of the right to take an appeal nunc pro tunc.
15. On February 5, 2001, the Petitioner filed a notice of appeal to the Pennsylvania Superior Court and the Pennsylvania Superior Court remanded the case on March 19, 2002.
16. On December 10, 2002, the Trial Court denied the Petitioner's PCRA petition.
17. On December 17, 2002, the Petitioner filed a notice of appeal to the Pennsylvania Superior Court and on September 12, 2003, the Pennsylvania Superior Court affirmed the Lower Court's order denying the Petitioner's PCRA petition.
18. On October 6, 2003, the Petitioner filed a petition for allowance of appeal to the Pennsylvania Supreme Court, which was denied on September 29, 2004.
19. On February 25, 2005, the Petitioner filed the instant habeas corpus petition at the above number and term.
20. The brief of the Petitioner submitted to the Pennsylvania Superior Court contesting lower state court order denying his post conviction relief petition is set forth as Item #63 in Volume III of Respondent's Reproduced Record. The brief of the Commonwealth submitted to the Superior Court of Pennsylvania relating to the lower court's denial of the Petitioner's state PCRA petition is set forth as item #64 in Volume III of Respondent's Reproduced Record. The Respondent incorporates by reference said briefs as more fully set forth herein by reference to the Reproduced Record in this matter.
21. The opinions and orders of the Superior Court of Pennsylvania and the Supreme Court of Pennsylvania dated September 12, 2003 and September 29, 2004 respectively affirming denial of the Petitioner's state post conviction relief petition are set forth in Items #65 and #68 in Volume III of Respondent's reproduced record in this matter. Respondent incorporates by reference said items as more fully set forth herein.
22. All known transcripts of all hearings held pretrial, trial, sentencing and post conviction proceedings are available and have been incorporated into Volumes I, II and III of Respondent's Reproduced Record in this matter. Respondent is unaware of

any proceedings that were recorded but not transcribed. Respondent believes that all of the transcripts relating to the testimony of both pretrial, trial and post conviction relief act proceeding are relevant and incorporates by reference those transcripts to this answer as set forth in Respondent's Reproduced Records in Volumes I, II and III.

Wherefore, based on the foregoing, the Commonwealth respectfully requests this Honorable Court to dismiss the Petition for Writ of habeas Corpus in the above captioned case.

Respectfully submitted,



DOUGLAS W. FERGUSON, ESQ.
Assistant District Attorney



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July 19, 2005

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United States District Court
PO Box 1820
Erie, PA 16507

RE: Anthony McFerren
C.A. No.: 05-66 ERIE

Dear District Court:

Enclosed is the original and one copy of the Respondent's Brief, Answer to Petition and complete reproduced record in the above captioned case along with a Proof of Service.

Sincerely,



DOUGLAS W. FERGUSON, ESQ.
Assistant District Attorney

DWF/ml
Enclosures

Cc: Anthony McFerren
Superintendent Tennis
Tracey McCullough
Francis Filipi

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PROOF OF SERVICE

I hereby certify that I am serving the foregoing document upon the person and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121.

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Date: July 19, 2005



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